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FISCAL IMPACT STATEMENT

LS 6674

BILL NUMBER: HB 1384

NOTE PREPARED: Feb 21, 2007

BILL AMENDED: Feb 21, 2007

SUBJECT: Criminal Gangs.

FIRST AUTHOR: Rep. Lawson L

FIRST SPONSOR: Sen. Bray

BILL STATUS: As Passed House

FUNDS AFFECTED: ☒ **GENERAL**
DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: This bill has the following provisions:

Definition of Criminal Gang: It changes the definition of "criminal gang", for purposes of certain criminal statutes, to provide that a criminal gang consists of at least three members (instead of five members).

Felony Offenses: It makes it a Class D felony for an individual to solicit, recruit, entice, or intimidate another individual to join a criminal gang. It makes criminal gang recruitment a Class C felony if: (1) the solicitation, recruitment, enticement, or intimidation to join a criminal gang occurs within 1,000 feet of school property; or (2) the individual being solicited, recruited, enticed, or intimidated to join a criminal gang is less than 18 years of age.

Restitution: It requires a court to order a criminal gang member to make restitution to a victim of a felony or misdemeanor committed by the criminal gang member.

Civil Actions: It provides that a victim or certain entities have a civil cause of action against a criminal gang member for the commission of a felony or misdemeanor by the criminal gang member.

Criminal Justice Institute: It requires the Criminal Justice Institute to develop, maintain, and identify grants and other funds for the Criminal Gang Witness Protection Program. It establishes a program to provide a person who witnesses criminal gang crime with certain expenses.

Indiana State Police: It requires the State Police to develop and maintain the Criminal Gang Data Base to assist law enforcement with the exchange of information regarding criminal gangs.

Funding: It requires the State Police and the Criminal Justice Institute to identify grants and other funds to operate the Criminal Gang Data Base.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *Definition of Criminal Gang:* The definition of a criminal gang under IC 35-45-9-1 is used in several sections of the code unrelated to criminal penalties, including for the Anti-Gang Counseling Pilot Program and Fund in the Department of Education; the definition of psychologically affected properties; an aggrieved person for purposes of civil remedies for racketeering activity; and for limited liability of parents for damages caused by a child. A change in the number of members defining a criminal gang has indeterminate fiscal impact in these sections.

The definition of criminal gang under both IC 35-45-9-1 and IC 35-50-2-1.4 affects criminal and juvenile cases with potentially increased fiscal cost based on changes in the bill. There are two criminal offenses involving criminal gangs including criminal gang activity, a Class D felony, and criminal gang intimidation, a Class C felony. Under IC 31-30-1-4, the juvenile court does not have jurisdiction over these cases. There are no data available to indicate if more offenders may be convicted of these crimes if the number of gang members is reduced from five to three. On average between 2001 and 2005, there were two offenders a year committed to a state correctional facility for criminal gang activity and no offenders committed for criminal gang intimidation. Also, violation of the sections concerning criminal gang activity or intimidation is a racketeering activity and may lead to a conviction for corrupt business influence, a Class C felony. Between 2001 and 2005, five offenders a year on average were committed to a state correctional facility for corrupt business influence.

Based on the definition of criminal gang activity in IC 35-50-2-1.4, the state may seek to have an additional fixed term of imprisonment equal to the sentence imposed for the underlying felony or to the longest sentence for multiple felonies. This fixed term of incarceration runs consecutively to the underlying sentence and may not be suspended. If offenders are incarcerated for longer periods of time, costs to the state could increase. Further, if the defendant committed murder while committing criminal gang activity, the state may seek either the death penalty or life in prison without parole. State expenditures could increase if a defendant is subject to a death penalty or life in prison without parole rather than a determinate sentence. If a prosecuting attorney requests the death penalty and the court imposes a death sentence on a defendant, then state expenditures may be less than when a prosecuting attorney seeks and the court imposes life imprisonment without parole. A determinate sentence of 65 years where the offender is released after 32 years for good behavior requires less expenditures than the other two sentences.

Felony Offenses: There are no data to indicate how many offenders may be convicted of criminal gang recruitment, a Class D felony, or a Class C felony in certain circumstances.

Background on Felony Penalties: A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances, and a Class C felony is punishable by a prison term ranging from two to eight years. The average expenditure to house an adult offender was \$22,734 in FY 2006. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,139. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months, and average length of stay for all Class C felony offenders is approximately two years.

Background on Death Penalty: LSA staff compared the state's after-trial costs in this analysis for a hypothetical 30-year-old offender. (The average age of 84 offenders who were sentenced to death was 30 at the time when a request for a death penalty was made against them.) The post-trial expenditures are incurred by the Office of the Attorney General, the DOC, the State Public Defender, the State Police, and the Public Defender Commission, which reimburses counties for a percentage of the costs of representing a defendant in a direct appeals case.

Because these costs occur at different points in time, a net present value was calculated for each cost stream assuming an annual inflation rate of 5%. The following table presents the total costs for each sentence option.

| Estimated State Expenditures of Sentencing Outcomes for a 30-Year-Old Offender Convicted of Aggravated Murder in a Death Penalty Trial | |
|---|--------------------------|
| <i>Sentence Option</i> | <i>Net Present Value</i> |
| Death Penalty | \$513,953 |
| Life Without Parole | \$610,878 |
| 65 Years with 50% Credit Time | \$485,390 |

Criminal Justice Institute: The bill adds to the responsibilities of the Criminal Justice Institute (CJI) to include developing and managing a Criminal Gang Witness Protection Program, and administering the Gang Crime Witness Protection Fund, established in the bill. The CJI adopts rules for the Program. Also, the CJI identifies grants and other funding for the Program and may delay implementation of the Program until the earlier of a date set by the Director of the CJI or the date funding becomes available by a grant.

Program: The Criminal Gang Witness Protection Program assists witnesses of gang crimes with temporary living costs, moving expenses, rent, security deposits, and other appropriate expenses. There are no other witness protection programs operated by state or local units in Indiana, making an estimate of the potential costs indeterminate. The bill also establishes the Gang Crime Witness Protection Fund which does not revert to the state General Fund at the end of the year.

Indiana State Police: The Indiana State Police (ISP) develops and manages a statewide Criminal Gang Database and adopt rules to implement the Database. Both the ISP and CJI are to identify grants and other funds that can be used by the ISP and law enforcement to carry out responsibilities concerning the Database.

Database: The Database is to assist law enforcement with the exchange of information concerning criminal gangs. The cost to develop a database will depend on a number of factors, including the number of variables tracked by the database and the number of users. The cost to implement a new database is estimated between \$75,000 and \$500,000, depending on the complexity.

The funds and resources required for both the Program and Database could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; (5) new appropriations; or (6) grants. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Explanation of State Revenues: *Definition of Criminal Gang and Felony Offenses:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony and a Class C felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), the judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Civil Actions: The bill allows a civil action to be brought by the crime victim or a family member of the crime victim; by entities that investigate or respond to an incident related to the crime; by a person injured by negligent actions; or by a neighborhood association within the boundaries where the crime took place. These entities may recover economic damages, noneconomic damages, exemplary damages, reasonable attorney's fees, and court costs. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Definition of Criminal Gang Criminal and Felony Offenses:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Definition of Criminal Gang and Felony Offenses:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

Civil Actions: If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: Indiana State Police; Department of Education; Department of Correction; Criminal Justice Institute.

Local Agencies Affected: Trial courts, city and town courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, Department of Correction; Amanda Thornton,

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